

REMARKS

By this amendment, claims 2, 3, 7-12, 33 and 57 are amended; claim 23 is canceled; claims 1-3, 5-14, 33-38 and 57-59 are pending. Claims 1, 35, 36 and 58 were allowed. Claim 57 was objected to.

Claim 2 is amended in accordance with the Examiner's suggestion to recite "entire". Claim 3 is amended to recite "200". Support can be found in the specification as filed, for example, at page 90, lines 9-21.

Claims 7 -12 are amended to specify nucleotide numbering appearing in the sequence listing.

Claim 33 is amended in accordance with the Examiner's suggestion to recite a *Markush* format and specifically to use singular expressions which also cover the plural embodiments.

Claims 58 and 59 are added. These claims parallel subject matter claimed in claims 37 and 38, but are amended to incorporate language proposed by the Examiner.

No issue of new matter arises.

In view of the amendment and associated Remarks, reconsideration and withdrawal of all outstanding rejections are deemed proper.

Rejection under 35 USC §101

Claims 37 and 38 were rejected under 35 U.S.C. §101 as allegedly encompassing¹ a human being. Applicants respectfully traverse this rejection. Applicants respectfully submit that even in an instance where a host cell of the present invention might become integrated into a human being, it would not replace or include the human being. It would remain only a part of the human being. Accordingly, the host cell cannot properly be said to encompass said human being. Reconsideration and withdrawal of this rejection are respectfully requested.

Rejection under 35 USC §112, second paragraph

Claims 7-12, 33 and 34 were rejected under 35 U.S.C. §112, second paragraph as allegedly being indefinite.

Claims 7-12 were alleged to be indefinite with respect to reference to antecedent basis for *inter alia* negative numeric expressions. Claims 7-12 are amended to reference nucleotide numbering as it appears in the sequence listing. Reconsideration and withdrawal of this rejection are respectfully requested.

¹ **Encompass** v. 1. To enclose. 2. To constitute or include. (*American Heritage Dictionary, Third Edition*).

Claim 33 is amended to recite "polypeptide" and "nuclei acid" in singular form as suggested by the Examiner. Applicants agree with the Examiner that such expressions are construed as encompassing one or more. Claim 34 was rejected based on its dependence from claim 33. In view of amendments to claim 33. Applicants respectfully submit that these claims are now in condition for allowance. Reconsideration and withdrawal of this rejection are respectfully requested.

Rejections under 35 USC §102

Claims 2, 3, 5-14 and 23 were rejected over Langmann. The rejection had been withdrawn in view of the April 21, 2003 filing. Since the claims were amended to no longer recite larger molecules, the rejection was reinstated. Claims 2 and 3 are amended to recite at minimum larger molecules in order to obviate this rejection. Claims which ultimately depend from claim 2 or 3 are patentable over Langmann for at least the same reasons as claims 2 and 3. Reconsideration and withdrawal of this rejection are respectfully requested.

Claim 2 was rejected over Auffray. Claim 2 is amended to recite "entire" as suggested by the Examiner. Reconsideration and withdrawal of this rejection are respectfully requested.

Claims 2, 3, 6-14 and 23 were rejected over Tall. Tall is cited as disclosing the nucleotide sequence from 624 to 1197 of SEQ ID NO: 1. Applicants respectfully traverse this rejection.

Tall cannot properly be said to anticipate claim 2 because SEQ ID NO: 2 does not comprise the bp 624-1197 of SEQ ID NO: 1. The claims are amended to recite larger molecules than disclosed at 1005 to 1059 (55 bp). Claim 23 is canceled. Reconsideration and withdrawal of this rejection are respectfully requested.

Claims 2, 5, 6-13 and 23 were rejected over Hayden. Claim 23 is canceled. Claim amendments are made herein to recite larger molecules to overcome this rejection. Reconsideration and withdrawal of this rejection are respectfully requested.

Conclusion

In view of the above amendments and remarks, Applicants respectfully request reconsideration and withdrawal of all pending rejections. Applicants respectfully submit that the application is now in condition for allowance and request prompt issuance of a Notice of Allowance. Should the Examiner believe that anything further is desirable that

might put the application in even better condition for allowance, the Examiner is requested to contact the undersigned at the telephone number listed below.

Fees

No fees are believed to be necessitated by the instant response. However, should this be in error, authorization is hereby given to charge Deposit Account no. 18-1982 for any underpayment, or to credit any overpayments.

Respectfully submitted,



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